UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/11
13 January 1999

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 5 of the provisional agenda

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur, pursuant to Commission resolution 1998/6

CONTENTS

	Paragraphs	Page
Introduction	1 - 5	3
I. ACTIVITIES OF THE SPECIAL RAPPORTEUR	6 - 23	3
A. Implementation of the programme of activities	6 - 8	3
B. Correspondence	9 - 20	4
C. Correspondence regarding mercenary activities against Cuba	21 - 23	9
II. MERCENARY ACTIVITIES IN SIERRA LEONE	24 - 31	11

GE.99-10155 (E)

CONTENTS (continued)

		Paragraphs	Page
III.	PERSISTENCE AND EVOLUTION OF MERCENARY ACTIVITIES	32 - 62	13
	A. The present situation	35 - 44	13
	B. Current international legislation and its limitations	45 - 55	16
	C. Terrorism and mercenary activities	56 - 62	19
IV.	PRIVATE SECURITY AND MILITARY ASSISTANCE COMPANIES AND MERCENARY ACTIVITIES	63 - 76	20
V.	CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES	77 - 78	24
VI.	CONCLUSIONS	79 - 92	24
VII.	RECOMMENDATIONS	93 - 101	27

Introduction

1. At its fifty-fourth session, the Commission on Human Rights adopted resolution 1998/6 of 27 March 1998, in which, inter alia, it reaffirmed that the recruitment, use, financing and training of mercenaries were causes for grave concern to all States and violated the purposes and principles of the Charter of the United Nations. The Commission called upon all States that had not yet done so to consider taking the necessary action to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and urged them to cooperate fully with the Special Rapporteur in the fulfilment of his mandate.

2. Taking note of the report of the Special Rapporteur (E/CN.4/1998/31 and Add.1), the Commission also urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take necessary legislative measures to ensure that their territories and other territories under their control, as well as their nationals, were not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to destabilize or overthrow the Government of any State or threaten the territorial integrity and political unity of sovereign States or to promote secession. The Commission welcomed the adoption by some States of national legislation that restricted the use of mercenaries and the cooperation of those countries that had issued invitations to the Special Rapporteur to visit their countries. It also requested the Office of the United Nations High Commissioner for Human Rights, as a matter of priority, to publicize the adverse effects of mercenary activities on the right of peoples to self-determination and, when requested and where necessary, to provide advisory services to States that were affected by the activities of mercenaries.

3. The Commission on Human Rights also decided to extend the mandate of the Special Rapporteur for three years and requested him to submit a report, with specific recommendations, to the Commission at its fifty-fifth session.

4. On 5 November 1998, the Third Committee of the General Assembly adopted a draft resolution on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

5. Pursuant to the provisions of resolution 1998/6, the Special Rapporteur has the honour to submit this report for the consideration of the Commission on Human Rights.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

6. The Special Rapporteur submitted his reports (E/CN.4/1998/31 and Add.1) to the Commission on Human Rights on 18 March 1998. While in Geneva, the Special Rapporteur had consultations with representatives of various States and held meetings with members of non-governmental organizations. He also

held meetings with officials of the Office of the United Nations High Commissioner for Human Rights, notably the Activities and Programmes Branch.

7. The Special Rapporteur returned to Geneva on three occasions, from 26 to 29 May, 17 to 21 August and 16 to 20 November 1998, to hold various consultations, to draft his report to the General Assembly and the present report and to participate in the fifth meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights. He also went to United Nations Headquarters in New York to submit his report to the Third Committee of the General Assembly. He made his presentation on 23 October 1998.

8. During the reporting period, the Special Rapporteur received invitations to undertake official missions to the United Kingdom of Great Britain and Northern Ireland and the Republic of Cuba. He would like to express his appreciation for the invitations and hopes to carry out the missions during 1999.

B. Correspondence

9. In pursuance of General Assembly resolution 52/112 of 12 December 1997 and Commission on Human Rights resolution 1998/6 of 27 March 1998, the Special Rapporteur sent a communication to all Member States of the United Nations on 6 July 1998 requesting them to send information on the existence of mercenary activities, the possible participation by nationals of their country in such activities and domestic legislation currently in force outlawing such activities. He also requested suggestions to help enhance the international approach to the topic, arrive at a better definition of mercenary and regulate the private companies which offer security services and assistance and military advice and which sometimes recruit mercenaries.

10. The Special Rapporteur received valuable assistance from the Governments of Ecuador, the Eastern Republic of Uruguay, the Federal Republic of Yugoslavia (Serbia and Montenegro), Honduras, Ireland, Portugal, Sweden and the Syrian Arab Republic, which provided useful information and comments (see the report of the Special Rapporteur to the fifty-third session of the General Assembly, paras. 8-16).

11. After having drafted his report to the General Assembly, the Special Rapporteur received the following communications. By note verbale dated 18 August 1998, the Permanent Mission of Finland to the United Nations Office at Geneva replied as follows:

> "The Government of Finland is committed to the fight against the use of mercenaries. In this regard, the Government of Finland is currently considering whether it is possible and desirable in the light of the present Finnish legislation to accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989."

12. Mr. Miroslav Milosevic, then Chargé d'Affaires ad interim of the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations Office at Geneva, provided additional

information on mercenary activities and terrorist actions in Kosovo and Metohija in a letter dated 27 August 1998. The letter reads verbatim as follows:

> "With the terrorist activities in Kosovo and Metohija further escalating, data have been officially registered on the active participation of foreign mercenaries in the terrorist activities of the so-called 'Kosovo Liberation Army' (KLA). Evidence is available on the support and assistance that the Republic of Albania has been providing for terrorists active within the so-called 'Liberation Army'. Thus, for example, northern Albania has been transformed into a number of recruitment centres for terrorists' training and into depots for the so-called KLA. The Yugoslav authorities possess documentation on the nationality, training expertise, tasks, experience and payment of foreign mercenaries who have been taken into Serbia to carry out activities in its territory (Kosovo and Metohija). In June and July of 1998, criminal charges were filed against seven Albanian nationals (mostly from the municipality of Tropoja, taken prisoners in our country on the occasion of smuggling large quantities of arms for committing terrorist activities in Kosovo and Metohija).
>
> "Apart from Albanian nationals, most other terrorists are the so-called 'mujaheddins', nationals from some Arab countries - Afghanistan, Sudan, Russian Federation (Chechnya) and others. Many of them have participated in the war in Bosnia and Herzegovina on the Muslim side. These are highly professional and well-trained fanatics who take a direct part in capturing and cleansing the region, in kidnapping citizens and members of police, in committing horrendous tortures and liquidations. They have served as special training instructors for the so-called KLA.
>
> "Apart from Albania, the Republic of Macedonia has also been used as a canal for the illegal entry of mercenaries into Yugoslav territory.
>
> "In Germany, Switzerland, Austria, the Netherlands, Bosnia and Herzegovina, Croatia and some other countries, highly trained professionals with substantial experience acquired in war operations and sabotage-terrorist activities in various parts of the world have been recruited. Mercenary recruitment and training centres and weapons pooling centres in Bosnia and Herzegovina have been in the vicinity of the cities of Zenica, Tuzla and Travnik. The Yugoslav authorities possess also data on the training of members of separatist-terrorist gangs in Kosovo and Metohija in the village of Mehurici, municipality of Travnik, Bosnia and Herzegovina.
>
> "Members of Muslim military formations in the war in Bosnia and Herzegovina have organized the transfer of Muslim mercenaries from Bosnia and Herzegovina into the territory of Serbia (Kosovo and Metohija)."

13. By letters dated 16, 17 and 29 September 1998, Mr. Branko Brankovic, Chargé d'affaires ad interim of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations Office at Geneva, enlarged upon the

information provided by his Government regarding what it considered to be terrorist activities carried out by foreign mercenaries and Islamic fundamentalists in the Autonomous Province of Kosovo and Metohija and submitted two documents entitled "Facts regarding the situation in Kosovo and Metohija" and "Conclusions of the National Assembly of the Republic of Serbia on the situation in Kosovo and Metohija". The Special Rapporteur regrets that he is unable to reproduce these communications in their entirety owing to the strict maximum number of pages allowed for Commission on Human Rights reports. Nevertheless, he considers it important to point out the following paragraphs contained in the letter dated 16 September 1998:

> "(...) The Islamic influence upon terrorist activities perpetrated by the so-called Kosovo Liberation Army (KLA) has been manifested in a number of ways, first of all through aid for purchasing armaments and military equipment provided by radical Islamic countries, but also through Mujahedin fighting within the KLA units. There is irrefutable evidence on the linkage between terrorism in Kosovo and Metohija and the Mujahedin in the Middle East, Africa and Asia, aimed at forced secession of Kosovo and Metohija from Serbia and the Federal Republic of Yugoslavia.
>
> "(...) In 1998 the leaders of the so-called Kosovo Liberation Army (KLA), with the idea of providing professional, experienced commanders and perpetrators of terrorist acts, have directed their activities to recruiting mercenaries and volunteers from Islamic countries and from Bosnia and Herzegovina. At the beginning of 1998, in the region of Zenica and Kalesija (Bosnia and Herzegovina), posts of the so-called KLA were set up, charged with recruiting mercenaries and volunteers, mostly among the demobilized members of the Muslim army of Bosnia and Herzegovina, particularly ex-members of its special units. According to the information obtained, their monthly pay ranges from 3,000 to 5,000 deutsche mark. Mujahedin from Arab and other Muslim countries are in charge of the training.
>
> "(...) Yugoslav authorities have obtained evidence whereby, from May to July 1998, in the region of Drenica in Kosovo and Metohija, a joint Mujahedin unit, 'Abu Bekir Sidik' was operating. This unit was first set up in mid-1997 in Bosnia and Herzegovina, under the instructions coming from Saudi Arabia and Turkey. Some DM 300,000, earmarked for arms purchasing and illegal transfer into Kosovo and Metohija have been provided by the 'World Office for Islamic Appeal'. The first contingent was illegally brought into the Federal Republic of Yugoslavia (Serbia and Montenegro) in July 1997, and the first Mujahedin unit was infiltrated in May 1998 to the village of Donji Prekaz. The unit, under the command of Ekrem Avija, consisted of 120 Mujahedin, divided into seven groups. A separated group consisted of Mujahedin from Saudi Arabia, the former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina and other countries, with an Egyptian national, Abu Ismail, heading it (he had been in charge of the former Mujahedin unit in the Bosnian war).
>
> "(...) I should like to point to the increasing presence of the Islamic factor in Kosovo and Metohija, which indicates to broader strategic interests to exert influence upon Albania, and the whole of the Balkans."

14. By a letter dated 12 August 1998, Ms. Sima Eivazova, Permanent Representative of the Azerbaijani Republic to the United Nations Office at Geneva, submitted a list of persons she described as mercenaries who had fought on the side of Armenia in the armed conflict against Azerbaijan. The list includes the following: Aleksandr Yuryevich Karavaev, born in Kazan; Sergei Konstantinovich Turchenko, born in Pskov; Nikolai Semenovich Chimpoev, resident of Tiraspol; Sergei Grigoryev, resident of Moscow; Stanislav Stefanovich Semenchuk; Nikolai Ivanovich Bukhnarev, resident of Moscow; Vladimir Vikentyevich Semenov, born in Kamyshin, Volgograd; Konstantin Immanuilovich Voevodsky, resident of St. Petersburg; Vladimir Maiorov; and Sergei Kuznetsov. The list includes the names of the following combatants killed in action in 1992: Nikolai Anatolyevich Shamkov; A.P. Voronin; S.M. Mukhaev; R.G. Chechnikov; S.M. Gladilin; D.S. Skrizhalik; and A.M. Kurzyukov. It also includes the names of the following nationals of the Russian Federation: Igor Evgenyevich Babanov; Aleksandr Viktorovich Shitko; Vladimir Zoltan; Sergei Ivanovich Kidalov; Akhmed Zhumagaliev; Daud Khamrasovich Lusenov; Bashir Akhmedovich Nalgiev; and Abukhar Akhmedovich Nalgiev.

15. The Permanent Representative of Azerbaijan also gave the Special Rapporteur a list containing the names of 13 persons considered to be mercenaries, captured while fighting on the side of the Armenian forces: Vladimir Nikolaevich Semion; Nikolai Vitalyevich Goncharov; Vladimir Aleksandrovich Polyakov; Aleksandr Yuryevich Korenko; Igor Chernenko; Sergei Veniaminovich Suchkov and Oleg Fedorovich Serdik. The list includes the names of the following persons, sentenced to death by the Military Division of the Supreme Court of Azerbaijan: Konstantin Vladimirovich Tukish; Yaroslav Leonidovich Evstigneev; Andrei Anatolyevich Filippov; Mikhail Stepanovich Lisovoi; and Vladislav Petrovich Kudinov. She also reported that Vasili Vladimirovich Lugovoi, who had been sentenced to 14 years' imprisonment, had been handed over to the authorities of the Russian Federation on 8 May 1996.

16. By note verbale dated 3 September 1998, the Permanent Mission of Mauritius to the United Nations Office at Geneva replied to the Special Rapporteur's request for information as follows:

> "(i) There is not the slightest evidence of the existence of any mercenary activities in Mauritius;
>
> "(ii) The Government of Mauritius has not enacted any domestic legislation nor is it a party to any international treaties outlawing mercenary activities; and
>
> "(iii) The Government of Mauritius is in favour of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. However, Mauritius has a well-organized police and a paramilitary force to ensure the security of the country."

17. In reply to a letter dated 8 July 1998, from Mr. Tony Lloyd, Minister with responsibility for human rights and United Nations affairs at the United Kingdom Ministry of Foreign Affairs, the Special Rapporteur sent the following letter on 20 August 1998:

"I have the honour to acknowledge and thank you for your letter of 8 July 1998, in which you accept my request to visit your country on an official mission for the purpose of continuing my current investigations into private companies providing security services and military assistance, pursuant to the mandate conferred by the Commission on Human Rights.

"I am particularly interested in meeting you and officials from the relevant governmental sectors and departments, specially Foreign Affairs, the Interior, Justice and Defence. I should be grateful if your Government would cooperate in drawing up a schedule of interviews with governmental authorities and officials, preferably in the morning, in order that I may have the afternoons for meetings with non-governmental organizations and academic research centres.

"As regards the dates of my visit, I would propose the week of 12 to 16 October 1998, arriving on 11 October and leaving on 17 October. I would be accompanied by Mr. Miguel de la Lama, who assists me in carrying out my mandate, and two interpreters. The organizational details will be worked out with your country's Permanent Mission to the United Nations Office at Geneva."

18. Mr. Roderic M.J. Lyne, CMG, Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva, sent the following letter, dated 24 September 1998, to the Special Rapporteur:

"Thank you for your letter of 20 August to the Minister of State at the Foreign and Commonwealth Office, Mr. Tony Lloyd MP. I have been asked to reply on Mr. Lloyd's behalf.

"My Government looks forward to your visit, and will do all that it can to help to facilitate the meetings you have requested. We have explored the possibility of setting up these meetings during the period suggested by you in mid-October. Unfortunately, our enquiries have established that many of the key interlocutors in the government departments you have specified will not be easily available during the week in question, because they are already committed to conflicting engagements. We think it important that your visit should take place at a time when the right people are available, and I fear that the notice is simply too short for us to organise the sort of programme you would like by 12 October.

"We would therefore like to propose that your visit should take place at a slightly later date. I understand that my authorities in London will soon be letting me have some dates we could put forward with confidence in our ability fully to meet your requests. I shall write to you again as soon as I have a new timing to propose. In the meantime, if there is any particular period later in the year in which, for your part, you would not be free to visit the United Kingdom, perhaps you could be so good as to let me know."

19. The Special Rapporteur and the United Kingdom authorities and Permanent Mission are discussing the possibility of a visit in early 1999. The Special Rapporteur is particularly anxious for a visit to take place then and is grateful for the cooperation of the United Kingdom Government and the Permanent Mission in preparations for the visit and, in general, the fulfilment of his mandate.

20. During 1998 the Special Rapporteur continued to receive the cooperation of various non-governmental organization (NGOs), including Amnesty International, Human Rights Watch and International Alert. He also received communications from, inter alia, the Bahrain Human Rights Organization, in Copenhagen; the Humanitarian Law Centre, in Belgrade; the Muttahida Quami Movement (MQM), in Edgware, United Kingdom; and the Organization for Defending Victims of Violence, in Tehran. He was also assisted by members of various institutions, such as Mr. David Shearer, of the International Institute of Strategic Studies. The Special Rapporteur once again underlines the importance of being able to rely on help from NGOs in carrying out his mandate, particularly at a time when the activity and growth of private companies offering security services and military assistance and making use of mercenaries, are a threat to traditional human rights protection systems around the world.

C. Correspondence regarding mercenary activities against Cuba

21. In his last report to the Commission on Human Rights (E/CN.4/1998/31, para. 20), the Special Rapporteur reproduced a letter from the Ministry of Foreign Affairs of Cuba dated 1 October 1997 concerning attacks on hotel and tourist facilities in Havana, particularly those carried out by the Salvadoran citizen Raúl Ernesto Cruz León, which resulted in the death of an Italian tourist. He also reproduced a letter replying to his request for information on this matter from the Permanent Representative of the United States of America to the United Nations Office at Geneva, dated 13 January 1998 (E/CN.4/1998/31/Add.1). In his recent report to the General Assembly, the Special Rapporteur reproduced a letter dated 3 August 1998, in which the Permanent Representative of Cuba to the United Nations Office at Geneva drew attention to an interview given to the North American newspaper The New York Times by Luis Posada Carriles on 12 and 13 June 1998.

22. In a further communication dated 15 October 1998, the Permanent Representative of Cuba to the United Nations Office at Geneva, Mr. Carlos Amat Forés, made the following statement:

> "(...) I would like to take this opportunity to inform the Special Rapporteur of the latest developments and facts relating to the use of mercenaries that have recently affected Cuba.
>
> "As we have repeatedly said in various international forums, the use of mercenaries and their recruitment, financing and training are offences that deeply concern the Government of Cuba, since they violate the fundamental principles of international law, while mercenary activities constitute gross violations of fundamental human rights.

"On 4 March 1998, two Guatemalan citizens, Nader Kamal Musalam Bacarat and María Elena González Meza, were arrested in Havana for attempting to bring into the country the means to make explosive devices, such as detonators, plastic explosive, timers, interface circuits and batteries. Their mission was to explode these devices in public places. On 20 March, María Elena's husband, Mr. Jazid Iván Fernández Mendoza, was also arrested in Havana for helping to disguise the components and plan the actions.

"In the course of the investigation, they admitted that their motives for carrying out such terrorist actions were financial, since, on their return to Guatemala, the activities were to have been paid for by a Salvadoran citizen, Francisco Chávez Abarca, whom they identified as the person who had recruited and trained them and supplied the necessary components.

"We would like to take this opportunity to draw the Special Rapporteur's attention to Mr. Chávez Abarca, since it was he who organized the terrorist acts perpetrated by Raúl Ernesto Cruz León in Havana in 1997.

"Moreover, on 10 June 1998, another Salvadoran citizen, Otto René Rodríguez Llerena, was arrested in Cuba while attempting to bring in components for two explosive devices for the purposes of terrorist actions.

"Rodriguez Llerena admitted that he had caused the explosion that took place on 4 July 1997 in the lobby of the Cohiba Hotel in Havana and that he had been recruited, trained and supplied by Luis Posada Carriles, a terrorist of Cuban origin, who had paid him around US$ 1,000 for that action. He stated that, on this occasion, too, his motive was financial and that it was once again Posada Carriles who had supplied the components and financed the trip.

"Given that these operations are linked with Miami-based extremist organizations, as Posada Carriles himself admitted in his New York Times interview, the Government of Cuba once again urges the Special Rapporteur to use his good offices to request the United States authorities to take firm and decisive action to put an end to these objectionable activities.

"The Special Rapporteur should also continue the work he has been doing in his latest reports, of analysing the causes and consequences of mercenary practices and their increasingly close links with terrorist activities."

23. On the same date, the Permanent Representative of Cuba to the United Nations Office at Geneva, Mr. Carlos Amat Forés, sent the Special Rapporteur an official invitation from his Government to visit Cuba. He noted that "this visit is a part of my Government's traditional cooperation with the Office of the Special Rapporteur which you direct as part of the global mechanisms for the protection of human rights throughout the world". The Special Rapporteur appreciates the cooperation offered by the Government of Cuba in the discharge of his mandate and hopes to visit Cuba on an official mission during 1999.

II. MERCENARY ACTIVITIES IN SIERRA LEONE

24. In previous reports, the Special Rapporteur has discussed the armed conflict in Sierra Leone and the presence there of private companies offering security services and military assistance and advice, and of mercenaries recruited by such companies. As is well known, Sierra Leone has for seven years been in the grip of an armed conflict which, having begun as a spillover from the civil war in Liberia, has made the country one of the poorest in Africa and the world and caused the displacement of 420,000 of its nationals. The security firm Executive Outcomes, which is registered in South Africa and made up of former members of the thirty-second battalion of the South African army, was contracted by Valentin Strasser's Government, but left Sierra Leone at the time the peace accord was signed in November 1996, after having provided military assistance services for several months.

25. In a coup d'état on 25 May 1997, led by Commander Johnny Paul Koroma, the constitutional President Alhaji Ahmed Tejan Kabbah was overthrown and a revolutionary council was formed. Lower ranks of the armed forces took part in the coup. A number of foreign companies involved in diamond, titanium, gold and bauxite mining left the country or suspended their operations. The Governments of the region not only condemned the coup, but also isolated the new de facto Government and demanded the return of the deposed President. The de facto Government in its turn called on Nigeria to return Foday Sankoh, the leader of the Revolutionary United Front (RUF).

26. The Special Rapporteur has learned that, while in exile in Guinea, the deposed President signed a contract with Sandline International, a company registered in the Bahamas and with offices in Chelsea, London, to provide him with military support, advice and assistance in regaining power. This company is already known to the Special Rapporteur and has been mentioned in previous reports in connection with its unsuccessful intervention in Papua New Guinea (see, for example, E/CN.4/1998/31, paras. 93-99). In 1997, Sandline International signed a contract for US$ 36 million with the Government of Papua New Guinea, whose Prime Minister was then Sir Julius Chan, to carry out offensive military operations in Bougainville, engage the rebels of the Bougainville Revolutionary Army and provide mercenaries, sophisticated military equipment and military assistance. Shortly afterwards, Sir Julius Chan's Government was legally ousted and the mercenaries sent in by the company were expelled.

27. According to the information received by the Special Rapporteur, a number of financial and mining companies with debts and interests of various kinds in Sierra Leone gave their support and even partial financial backing to the contract with Sandline International. After signing the contract, the company prepared and dispatched a document giving its view of the operations to be carried out and various strategic and tactical plans. Helicopters and military equipment were subsequently exported to Sierra Leone, allegedly via Bulgaria, Nigeria and Liberia, in breach of the embargo imposed under Security Council resolution 1132 (1997); military experts were also sent and are still providing tactical and operational advice on the ground. The first arms sent by Sandline arrived on 22 February 1998.

28. On 10 March 1998, after bloody fighting in which the forces of the Economic Community of West African States (ECOMOG) took part, the coalition Government formed by the Armed Forces Revolutionary Council (AFRC) and the Revolutionary United Front (RUF) was overthrown, and President Tejan Kabbah was able to return to Freetown. The war continued, however. Soldiers loyal to the ousted military junta have committed atrocities against the civilian population in their flight to the east of the country. The decapitated, dismembered or burnt corpses of more than 100 people were seen in the areas of Bo, Lunsar, Kenema and Makeni, as witness to the vengefulness of those who had been dislodged from power; 1,500 supporters of the junta were arrested and 59 were accused of treason. Of these, 24 were sentenced to death at a trial without right of appeal and were executed on 19 October 1998.

29. While ECOMOG forces devote themselves to keeping order in Freetown, Sandline International employees advise the Government as it plans the creation of a new army with no links to those involved in the coup d'état. Efforts are also being made to organize the population in civil defence or self-defence forces. Hinga Norman, a chief of the Mende Tribe, and educated in the United Kingdom, has set up a 20,000-strong paramilitary force called Kamajor with the aim of stamping out the rebellion. This paramilitary force is also reported to be committing gross violations of human rights with the acquiescence of the Government and after training and advice from Sandline International mercenaries. The Special Rapporteur has been informed of appalling acts of cruelty committed by mercenaries on captured rebels and on civilians suspected of collaborating with the insurgents. During the week of 30 November 1998, 70 rebels were killed in battle in Gberay, a rebel base 100 kilometres north of the capital. Many of the bodies were mutilated and incinerated.

30. As the Special Rapporteur has noted in previous reports, the presence in Sierra Leone of the company Executive Outcomes, which had fought the rebels and made possible the November 1996 peace agreement, did not help to avert the coup d'état of 25 May 1997 or the formation of an alliance of former enemies from RUF and AFRC in a coalition Government. Hiring private companies providing security and military assistance and advice is no substitute for maintaining a collective regional security system and genuinely professional national armed forces and security forces loyal to the democratic legal order. It is a false solution. When companies of this type leave the country, they also leave behind the structural problems they found when they arrived - unsolved, if not actually worse.

31. The recruitment, financing and use of mercenaries by such companies are unacceptable under any circumstances, even when the aim is claimed to be the restoration of a constitutional regime overthrown by a coup d'état. This means, however, that the international community must promote the development of effective regional and global collective security mechanisms and give its backing to the work of the United Nations, which has recently opened an office in Sierra Leone (the United Nations Observer Mission in Sierra Leone - UNOMSIL) to work for peace and human rights in that country.

III. PERSISTENCE AND EVOLUTION OF MERCENARY ACTIVITIES

32. One question needs to be asked: why is it that mercenary activities persist when they have so often been condemned by various United Nations bodies, when no State will admit publicly that it uses mercenaries and when anyone working as a mercenary knows that he will be an outcast even among his closest acquaintances? To say that this is due to the attractively high pay is only half the story. Mercenarism is only in part individual behaviour for which the mercenary himself is solely responsible.

33. The years that the Special Rapporteur has spent looking into the phenomenon of mercenarism and observing how it has metamorphosed outwardly, yet without changing in essence, have led him towards an alternative hypothesis, namely, that it occurs in inverse proportion to peace, political stability, respect for the legal and democratic order, the ability to exploit natural resources in a rational manner, a well-integrated population and a fair distribution of development which prevents extreme poverty. Where all these factors coincide, the risk of mercenary activity is minimal. Conversely, when these factors are not present or occur in haphazard, insufficient, intermittent or contradictory ways, the likelihood of mercenary intervention increases, either because violence, intolerance and the lust for power create conditions that facilitate instrumental links of some kind with mercenaries; or because a third Power, which does not want to be directly involved or to be accused of interventionism, resorts to such action for its own advantage.

34. On the basis of this hypothesis, the Special Rapporteur monitored a number of situations in which mercenaries were involved and found that, while mercenaries might be recruited, trained and financed from within solid, stable countries, they are in fact used chiefly in countries affected by political violence, internal armed conflict, insurrection or insurgency and lacking the necessary financial or technical capacity to prospect for and exploit natural resources on an industrial scale. Their presence and behaviour are not those of heroic saviours, but those of criminals, experienced in the use of arms, whose activities generally have an impact on the self-determination of the nation in which they interfere.

A. The present situation

35. The Special Rapporteur has established that, unlike mercenaries such as Colonel Bob Denard or Mike Hoare in Katanga during the 1960s, today's mercenaries do not work independently. They are more likely to be recruited by private companies offering security services and military advice and assistance, in order to take part or even fight in internal or international armed conflicts. This is because the parties in a conflict have specific military needs that require the participation and hiring of professional soldiers. Mercenaries are usually, or have been, soldiers, combatants or, more frequently, members of special units and have experience with sophisticated weapons; this applies particularly to those recruited to take part in combat and to train those who are to make up battalions, columns or commando units. Armed conflicts, terrorism, arms trafficking, covert operations by third Powers, Governments' inability to establish or guarantee

security in their own countries and violence connected with positions of extreme intolerance all encourage the demand for mercenaries on the global market.

36. Within the historical structure of the nation State, which is still the basis of international society, it is inadmissible for any State legally to authorize mercenary activities, regardless of the form they take or the objectives they serve. Even where legislation is lacking or deficient mercenarism is an international crime. Mercenary activity arises in the context of situations that violate the right of peoples to self-determination and the sovereignty of States. In practice, mercenaries commit atrocities and impede the exercise of human rights. The mere fact that it is a Government that recruits mercenaries, or contracts companies that recruit mercenaries, in its own defence or to provide reinforcements in armed conflicts does not make such actions any less illegal or illegitimate. Governments are authorized to operate solely under the Constitution and the international treaties to which they are parties. Under no circumstance may they use the power conferred on them to carry out acts that impede the self-determination of peoples, to jeopardize the independence and sovereignty of the State itself or to condone actions that may do severe harm to their citizens' lives and security.

37. The fact that military units made up of mercenaries are supposed to be more efficient, that the use of mercenaries helps to preserve the life of young conscripts or that it is cheaper to recruit mercenaries than to maintain a regular army are weak arguments, and legally and ethically questionable. If such arguments were used as the grounds for praxis, States would reach a stage when they would have to abolish their military forces or cut them back drastically and invite mercenary organizations in to take charge of not only border control, but possibly also the maintenance of law and order.

38. Rather than yield to dangerous arguments such as those that aim to "rehabilitate" the mercenary at a time of globalization, the undermining of the sovereignty of the nation State and the privatization of conflicts, war and the maintenance of law and order, it must not be forgotten that mercenaries, by definition, act without regard for ideals or legal or moral commitments. They are mercenaries not because order must be restored, armed conflicts must cease or peace must be built, but because they have been paid significant amounts by third parties to involve themselves militarily in conflicts that do not concern them. Their involvement is thus directly motivated by financial gain. The same is true of modern business groups offering security services on an industrial scale around the world and recruiting, financing and using mercenaries for some of their activities.

39. For mercenary activity to occur, there must be third parties with an interest in resorting to the employment of mercenaries in order to carry out activities that are to their advantage, even though such activities may violate the legislation in force and the international obligation not to interfere in the internal affairs of another State. Clearly, for such a relationship to exist, there must also be recruiting organizations and companies and organizations to act as intermediaries between those who supply and those who demand the service.

40. The Special Rapporteur is of the opinion that investigations into mercenary activities must be objective, encompass all those involved and seek to determine the nature of the act, without accepting any formal legal limitations that may be invoked precisely to conceal the mercenary component. The investigators must also establish the actual identity and nationality of the mercenary, go through the files, rule out altruistic voluntary enlistment, compile information on recruitment and training centres, follow the trail of covert operations, obtain reliable data on aspects relating to the payment and other benefits agreed upon and detect the simultaneous use of other nationalities and passports, etc. In cases where nationality is granted to foreigners taking part in an armed conflict, the investigation must establish the length of time, circumstances and legal grounds for the good faith and legitimacy of the new nationality.

41. The issue of mercenary activity has so many ramifications nowadays that attention must focus on the matter of nationality, which hitherto has been considered as a means of differentiation and a determining factor in the definition of a mercenary. Indeed, a foreign Power can avail itself of nationals of the country it intends to attack in order to do it serious harm. In such a case, the rules of international law as they now stand would not allow the act to be defined as mercenary, even if there was evidence of, for example, recruitment and payment. Even though existing international law may be excessively rigid or full of gaps or does not lend itself to the formal definition of a criminal as a mercenary, it would be wrong to invoke the existing rules either in too restrictive a manner or in such a way as to justify mercenary acts and behaviour.

42. Without obviating the need to clarify, refine, update and expand the rules of customary international and treaty law to combat mercenary activity, it should be established as a principle that, in essence, the aim of such rules is to condemn a mercenary act in the broad sense of the buying and selling of military services that are not subject to the humanitarian standards that apply to armed conflicts and that are likely to lead to war crimes and human rights violations. It should not be forgotten that, in addition, current international law condemns interference by one State in the internal affairs of another State and the impeding of the self-determination of peoples and that it is, if anything, an aggravating factor if the State interfering employs nationals of the other country for that purpose. Such nationals would not, strictly speaking, be considered mercenaries, but, on the part of those recruiting them, the aim of using them as mercenaries is objectively undeniable, as is the willingness of such nationals to accept a relationship that turns them into mercenaries.

43. The definition does not change if a national group organized abroad for purposes of opposing their country's Government politically and militarily hires and pays mercenaries, based on their military experience or experience in the use of arms and explosives, in order to carry out attacks against the country and its Government. In any case, a distinction must be made between political opposition to a regime, which is the right of any member of a national community, and the employment of methods that are inherently unlawful, such as the use of mercenaries.

44. The Special Rapporteur repeats his view that unlawful activities in which a person's nationality is used by a Power that recruits, prepares and pays that person to mask the mercenary nature of the act should be analysed from the standpoint of a broad, up-to-date interpretation of the international provisions on the subject and the general principles of international law. Since the General Assembly, the Security Council, the Economic and Social Council and the Commission on Human Rights have repeatedly condemned mercenary activities and since, in addition, Member States have condemned such activities and some countries have national laws making the use of mercenaries a crime, where there are no laws or only inadequate laws, a case can be made for the existence of customary international law that condemns and prohibits mercenary activities based on the nature of the acts and not on the fact of having a different nationality. The criterion of being foreign should thus be analysed from the perspective of and in line with higher provisions and the general principles of international law.

B. Current international legislation and its limitations

45. The Special Rapporteur deems it necessary to remind the Commission on Human Rights of the need for the international community to examine, study and reflect on the apparent connection between the persistence of and increase in mercenary activities and the obvious gaps in the international legislation currently in force. Furthermore, the increasing tendency of mercenaries to hide behind modern private companies providing security, advice and military assistance may be due to the fact that international legislation has not taken account of new forms of mercenary activities.

46. In the Special Rapporteur's experience the topic calls for a review as outlined below. Issues on which the relevant United Nations bodies must take a stand include: what is the status of a foreigner who enters a country and acquires its nationality in order to conceal the fact that he is a mercenary in the service of a third State or of another party in an armed conflict? Of a non-resident national who is paid by a third State to carry out criminal activities against his own country of origin? And what about a dual national, one of whose nationalities is that of the State against which he is acting, while he is being paid by the State of his other nationality or by a third State? What are the limits of *jus sanguinis* in an armed conflict when it is invoked by persons who are paid and sent to fight in a domestic or international armed conflict taking place in the country of their forebears? These questions are not simply casuistic. The Special Rapporteur's earlier reports contain specific references to situations such as those described and, even though the evidence pointed to mercenary activities, legal inadequacies and gaps made it difficult accurately to classify an act and the person who committed it.

47. The Commission on Human Rights has already drawn attention to the need to review and update the proposals intended to make the laws proscribing mercenary activities more effective. Furthermore, earlier resolutions of the General Assembly recommended that expert meetings should be convened to study more closely the ambiguities or inadequacies of the international legislation in force and to propose recommendations for a clearer legal definition that would make for more efficient prevention and punishment of mercenary activities. These meetings have not yet been held. The Special Rapporteur

recommends to the Commission on Human Rights that it should request the Office of the United Nations High Commissioner for Human Rights to convene, organize and plan such meetings in the context of its activities for the 1999-2000 biennium. The Commission must have clear, unambiguous criteria that would enable it to propose to the Economic and Social Council, and, through it, to submit to the General Assembly, new clear and effective legal proposals for preventing and punishing mercenary activities, particularly in their new forms. Statements formally condemning mercenary activities have not served to prevent an increase in calls on the services of mercenaries and recruiting companies of doubtful lawfulness and legitimacy. What is now needed is an improvement in the normative system to enable it to cope with the development of new criminal methods.

48. An analysis of the factors behind the recurrence and expansion of the phenomenon must consider the problems caused by gaps in existing international legislation and by flexibility with regard to classification as a mercenary. The persistence of mercenary activities, the range and variety of the forms on which they are carried out and the hidden networks of complicity behind these activities suggest that States, particularly the smallest and weakest ones, the least developed, those forming archipelagoes and those faced with armed insurrection and internal conflicts are not adequately protected against mercenarism in its various forms. International legal instruments that characterize mercenary activities negatively do exist, but their configuration and classification leave something to be desired. In other words, they contain gaps, inaccuracies, technical defects and obsolete terms that allow overly broad or ambiguous interpretations to be made. Genuine mercenaries take advantage of these legal imperfections and gaps to avoid being classified as such.

49. Article 47 of the 1977 Protocol I Additional to the Geneva Conventions of 1949 is the only universal international provision in force that contains a definition of mercenaries; paragraph 1 punishes the mercenary by excluding him from the category and rights of combatant or prisoner of war, which amounts to condemning him for his participation, for pay, in armed conflicts; and paragraph 2 then states the definition. The first point to emphasize is that, because of its placement and contents, article 47 of Additional Protocol I does not legislate on mercenary activities, but, rather, limits itself, from the standpoint of international humanitarian law, to providing for the possibility of mercenarism and defining the legal status of the mercenary if he takes part in an armed conflict. As may be seen, the purpose is not to eliminate or proscribe mercenary activities in general, but simply to regulate a specific situation. There is no other existing universal law. Hence the above-mentioned gaps.

50. In addition, the definition of mercenary contained in article 47 of Additional Protocol I lists the cumulative and concurrent requirements that must be met in order to determine who is a mercenary and who is not. Given the variety and complexity of the armed conflicts of the past three decades, however, the wording of this provision has not always been suitable for classifying mercenary activities.

51. According to the information provided directly to the Special Rapporteur by Governments, the laws of most Member States do not classify mercenarism as

a crime. In others, although it is classified as a crime, there is no known case in which the law has been enforced against anyone accused of being a mercenary. For instance, the 1870 Foreign Enlistment Act, a law in force in the United Kingdom of Great Britain and Northern Ireland, prohibits British citizens from becoming mercenaries and from recruiting them. However, the last case in which a person was tried under that law dates back to 1896.

52. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries adopted by the General Assembly on 4 December 1989 has not yet entered into force, although it has been more than nine years since its adoption as barely 16 States have ratified or acceded to it. While its provisions contain measures which are a step forward towards the eradication of this reprehensible activity, it should be noted that article 1, paragraph 1, reproduces almost verbatim the text of article 47 of Additional Protocol I on the definition of a mercenary. Added paragraph 2 relates to mercenary violence against the constitutional order or territorial integrity of a State. No progress has therefore been made with regard to a better and simpler definition of the concept of mercenary, which would allow quicker and more direct action to be taken against mercenary activities. In any event, the Special Rapporteur must point out that it would be easier to improve this important instrument if it were to enter into force in the near future.

53. In this context of the gaps in and the limitations of universal international legislation, the countries of Africa enjoy better legal protection thanks to the Convention for the Elimination of Mercenarism in Africa, which was adopted by the Organization of African Unity (OAU) at its 1977 meeting in Libreville and entered into force in 1985. But "better legal protection" does not mean full protection against all the current shapes, forms and manifestations which mercenary activities may take on that continent.

54. Clearly then, the gaps in and the inadequacy of existing legislation are manifest and to prolong the situation increases the risks and threats to the self-determination of peoples, the sovereignty of States and the enjoyment of human rights. It is superfluous to point out that it is precisely this context of legal ambiguities which is making mercenary activities more frequent and increasing the hiring and recruitment of mercenaries by private companies providing security services and military advice and assistance. Recourse is being had to mercenaries and companies that recruit, finance and employ them, without any real legal consequences for those who do the hiring or those hired. Most of the mercenaries who fought in wars in the 1990s in the Former Yugoslavia, Angola, Georgia, Nogorny Karabakh or the Democratic Republic of the Congo (then Zaire) now live comfortably in their homes, quite unbothered by the justice system, awaiting new offers to fight.

55. For the above reasons, the Special Rapporteur maintains that the relevant international legal instruments are but imperfect tools for preventing and punishing mercenary activities. There are difficulties in applying article 47 of the 1977 Additional Protocol I to the 1949 Geneva Conventions, particularly in cases where the person acquires the nationality of the country in which the fighting is taking place; mercenarism is not classified as an offence under the internal criminal law of many countries, and the International Convention against the Recruitment, Use, Financing and

Training of Mercenaries has yet to enter into force, given the small number of States that have expressed an interest in becoming parties to it. Consequently, the international community is faced with a situation that actually affects it and the time has come for the consideration of the issue by the Commission on Human Rights also to include the need to review and update international legislation on mercenary activities.

C. Terrorism and mercenary activities

56. A mercenary is a criminal; he acts not out of altruistic motives, but to earn money in exchange for his tactical and strategic skills and his handling of weapons and explosives. In this regard, the material connection between a mercenary's activity and the commission of terrorist acts has been established through many terrorist attacks in which the perpetrator was proven to be one or more mercenaries hired to commit the crime.

57. In paragraph 116 of the report submitted to the Commission on Human Rights, document E/CN.4/1997/24, the Special Rapporteur maintained that various forms of terrorist attacks are carried out by highly specialized criminal agents who are hired to blow up aircraft, mine bridges, destroy buildings and industrial complexes, assassinate and kidnap persons, etc. While in many cases the terrorist agent comes from fanatic groups espousing extremist ideologies, it must be remembered that terrorism is also a criminal activity in which mercenaries participate for payment, disregarding the most basic considerations of respect for human life and a country's legal order and security.

58. In parallel with this conclusion, the recommendation contained in paragraph 125 of the report maintained that "The international community must take into account the connection existing between terrorism and mercenary activities and the participation of mercenaries in criminal acts of a terrorist nature. It is suggested that commissions and working and study groups for the prevention and punishment of terrorism should be recommended to include mercenary activities in their analyses and conclusions".

59. The whole world was shaken by last year's terrorist attacks in Kenya and Tanzania. We know that they were by no means the first and that the madness of fanatical sects may cause further mass crimes against humanity. In this context, the Special Rapporteur considers it crucial to investigate the connections between the commission of terrorist attacks and the presence of mercenaries as material agents of these acts. To fail to consider a hypothesis such as that outlined here or to use a different criterion to assess the two phenomena, on the grounds that the motivation is different, would be a serious error that would weaken the line of prevention of terrorism and mercenary activities.

60. A mercenary involves himself in armed conflicts as a function of his military experience, doing so for substantial reward. Many mercenaries who are experts in the use of explosives and technical devices with destructive material effects are hired to commit deadly attacks that cause collective fear and dread or, in other words, indiscriminate terror. Accordingly, although the mercenary is not involved in the formulation of extremist ideologies that allow terror as a means of intimidation for the achievement of its objectives,

he assumes the status of terrorist when, for pay, he agrees to become the instrument of terror and commits acts that cause death and destruction with horrible efficiency. Without ceasing to be one, a mercenary can also become a terrorist.

61. Political, racial, religious and other types of extremist organizations whose thirst for vengeance or hatred leads them to call for the destruction of anyone who opposes them do not resort exclusively to their fanatical militants to carry out objective actions aimed at spreading terror. The search for morally reprehensible "efficiency" usually leads them to attempt to hire experts in explosives or assaults who agree for substantial pay to hire themselves out as mercenaries.

62. These organizations, which have made their criminal terrorist practices explicit, usually invite persons of various nationalities to join. Consideration must be given to the possibility of their recruiting and hiring mercenaries and of some of their affiliates or members hiring themselves out as mercenaries. Consequently, the Special Rapporteur emphasizes in his recommendation to the Commission on Human Rights that the study and analysis of this matter should be conducted with the utmost care and rigour.

IV. PRIVATE SECURITY AND MILITARY ASSISTANCE COMPANIES AND MERCENARY ACTIVITIES

63. In the previous report he submitted to the Commission on Human Rights at its fifty-fourth session (E/CN.4/1998/31), the Special Rapporteur dealt fully with private companies operating in the international market offering security services and military assistance and advice, normally matters reserved for the State and for which the State must assume responsibility. All the arguments and reservations expressed in that report are still valid and the Special Rapporteur therefore reiterates his position on and his concern about a matter that can affect State sovereignty, the self-determination of peoples, the stability of constitutional Governments and, more particularly, the current system of human rights protection and international humanitarian law.

64. These companies are developing their offers more and more aggressively, putting forward arguments for legitimacy based on military efficiency, cheaper operations, their personnel's proven experience and an alleged comparative advantage that would make it feasible or desirable to hire them for peace-building or peacekeeping operations such as those conducted by the United Nations or ECOWAS. In documents prepared by these companies, the Special Rapporteur has read studies of the comparative costs of various peacekeeping operations and what these companies would charge, with the difference, according to them, of greater efficiency for breaking up pockets of resistance, extinguishing hardline opposition or opening up avenues for humanitarian assistance. Advertising for these companies and the services and jobs they offer can be found on the Internet and leave no doubt as to what is being offered and the connection with mercenary agents.

65. In contrast, national States are showing no sign of a reaction that focuses on these companies' international expansion and the dangers it entails for State sovereignty and objectives. In his correspondence with Member States, the Special Rapporteur has asked for their opinion on this matter, but

the replies received have not dealt with it. This silence is alarming inasmuch as there are situations in which a country's press reports in abundant detail on the presence of companies involved in matters of national security and public safety without regard for human rights and in open contradiction with constitutional provisions that categorically state that internal order and security are the exclusive responsibility of the State.

66. South Africa is the country that has adopted the clearest position on these companies and their supply of military assistance services abroad. A South African law enacted in 1998 regulates military assistance abroad and defines the jurisdiction of private companies in this regard. It introduces a sentence of no more than 10 years' imprisonment and a fine of no more than 1 million rand for nationals or foreigners resident in South Africa who participate in military missions outside South African territory unauthorized by the State. It also imposes limits on the freedom of security companies to deal with military matters. It regulates, but does not prohibit, the existence of these companies which employ mercenaries. Meanwhile, Executive Outcomes, a company which was established in 1989 on the initiative of Eeben Barlow and has broad experience in military assistance in African countries, has complied with the law and registered with the Department of Defence as an organization providing military assistance, mainly training, abroad. In any event, it will be necessary to see the practical consequences of the law in order to form a definite opinion on its usefulness and efficiency.

67. During his mission to South Africa in October 1996 at the invitation of President Mandela's Government, the Special Rapporteur was told by Barlow that his company had no problems with the promulgation of that law, provided that it did not represent an added administrative burden that could reduce his organization's operational efficiency. As to the rest, he said, his company did business only with legitimate Governments and not with rebels or insurgents and made every effort to be scrupulous in its respect for the human rights of the inhabitants of the countries in which it intervened and for the rules of international humanitarian law. However, a recent Channel 4 documentary on "The War Business" shown on British television in May 1998 charged that Executive Outcomes had exploded a napalm bomb in a market in an African village, killing 500 people, including civilians, of course, in a single day.

68. Regardless of the declarations of good intentions and respect for human rights and humanitarian law made by the directors of these companies, the Special Rapporteur emphasizes that a matter of principle is the basis of the analysis and of the stance that the Commission on Human Rights should adopt. National security and public safety and action to combat rebels, traffickers and terrorists are not merchandise that can be freely sold. They are, instead, matters related to a State's very existence and raison d'être; providing security and maintaining law and order is solely the State's responsibility.

69. One argument is that, at a time of the globalization of the economy, information and communications, the privatization of security and law enforcement is also permissible. This argument holds that, when transnationals arrive in an underdeveloped country, they have to have their

own experienced security guards to police the perimeter of their facilities, since the security forces of the country in question do not offer any guarantees. If the area is prone to insurgency or organized crime, why, they ask, not allow these private guards to intervene and clean up the region, fighting even rebels or traffickers? The answer is clear: who guarantees the human rights of the inhabitants? Who guarantees that the provisions of the 1949 Geneva Conventions and their Additional Protocols will be respected in such fighting? Who guarantees that these companies, whose sole purpose is gain, will not artificially intensify or prolong the conflicts and situations of insecurity for the sole purpose of extending their stay and earning more money? It is not acceptable for private companies, which are perfectly legitimate in civil or commercial activities and whose sole aim is money, to replace a country's army and police force in providing national security and public safety and protecting the exercise of civil rights.

70. If Governments accept this substitution, they forsake their peoples and expose them to the risks of private protection that can discriminate among population groups for reasons of race or ideology; make use of military offensive and combat weapons normally reserved for forces that are the expression of the authority of the State; and, in that context, commit every kind of human rights abuse and violation.

71. If, as indicated above, private companies providing security services and military assistance and advice resort to the use of mercenaries, it must be made clear that the explanation given, i.e. that they act in the service of a constitutional or legitimate Government or to restore one to power, is not acceptable. The distinction between using mercenaries for good or evil ends is no more admissible than is the distinction between good and bad mercenaries. A State's weakness, a State's impoverishment and disintegration, the breakdown of the constitutional system, internal armed conflicts and anything that might constitute a grave risk for public order and peace in a country must be resolved on the basis of the multilateral security agreements that exist in all regions and on all continents, calling on international cooperation and strengthening all the peace-building and peacekeeping operations which are, according to the San Francisco Charter, to be carried out by the United Nations.

72. Specifically, it is neither lawful nor advisable, no matter how often short-term or emergency reasons are invoked, to entrust a country's security and the speedy settlement of armed conflicts to private companies which hire mercenaries to achieve those objectives and will earn substantial economic profits for their participation. Consider also that countries facing a situation in which they call on these companies are usually in a poor economic and financial position and lack the funds to pay for their services. They are therefore obliged to do so by granting concessions for resources that are part of the national heritage. The companies are prepared for this highly lucrative eventuality and have set up various branches and subsidiaries. Thus, Strategic Resources Corporation (SRC), the holding company for Executive Outcomes, has other independent companies such as the Branch Energy mining and oil company; Heritage Oil and Gas; Diamond Works, established in Vancouver in 1996 and today Canada's largest diamond producer; and airlines such as Ibis Air and other transport, logistics and service enterprises.

73. Of the companies offering security services and military assistance and advice on the globalized world market, mention should be made of Defence Systems Limited (DSL), which provides security to several mining and oil companies, Saladin Security; Control Risks Group; Braddock, Dunn and McDonald Inc. (BDM) headed by a former United States Secretary of Defense and headquartered in McLean, Virginia; Integrated Security Systems; Booz Allen and Hamilton, which trains the Saudi military forces; Vinnell Corporation, with Viet Nam war experience; O'Gara Protective Services; Science Applications International Corporation (SAIC); and Military Professional Resources Incorporated (MPRI), with headquarters in Alexandria, Virginia, which trained the Croatian army in 1995 and is currently training the armed forces of Bosnia and Herzegovina. These companies may affect the exercise of sovereignty in the countries in which they operate, create resentment among the inhabitants and contribute to impunity for the crimes committed by the mercenaries they hire.

74. Who is responsible for the human rights violations committed? The company will say it is the mercenaries acting individually or abusing their powers. The State will say that responsibility lies with the company and not with its own officials or forces. It is time for Member States and for the Commission on Human Rights to make a detailed study of this matter. More and more Governments are hiring these companies to settle the military conflicts that are destabilizing them, knowing full well that a mercenary component is included in the offer. Other bodies, including international organizations, sign contracts with them for security and logistical support. It is predictable that some Governments may also resort to this type of company to undertake unilateral action in another country, on the pretext of establishing order or ensuring peace in a given region. All of this is tantamount to officially tolerated mercenary intervention, even if it is with "the best of intentions".

75. Must the Commission on Human Rights accept such a situation? Is it not obvious to the international community that the trend is to replace traditional peacekeeping forces, which, under international law, are the responsibility of the United Nations and regional organizations, by operations carried out by these companies? It is rather strange that, in parallel with the growth of these companies' activities, a smear campaign has been waged against peacekeeping operations and that reference is being made to the unfortunate events in Somalia. The Commission should pay priority attention to the fact that a kind of privatization of war is being promoted through unilateral positions implemented by these private companies, with unforeseeable implications for the exercise of human rights. The Special Rapporteur's point of view has already been stated: without undermining the principles on which its very existence is based, the international community cannot allow the free and globalized market to function as well for operations for the sale of military assistance and peacekeeping and peace-building operations that are the province of the international organizations. To do otherwise would mean, in practice, allowing paramilitary forces with a mercenary component to interfere in internal affairs. In view of its special importance, however, the Special Rapporteur is, in accordance with his terms of reference, continuing to study this question in depth.

76. When this report is published, the Special Rapporteur will already have visited the United Kingdom, a country where some of the companies working in this line of military assistance and advisory services are registered. The results of the visit will form the basis of the Special Rapporteur's next report to the General Assembly. The Special Rapporteur would nevertheless consider it advisable for the Commission on Human Rights and other United Nations bodies to look into the possibility of convening an international conference of experts to study and take specific decisions on this matter, paying particular attention to the fact that these companies would like to be regarded as an alternative to the conduct of United Nations peace operations; that the hiring of such companies may lend legitimacy to the use of mercenaries; and, in particular, that a system should be devised for the protection of international human rights and the rules of international humanitarian law in a world of privatized wars and private combatants and police.

V. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

77. The Special Rapporteur has shown in his preliminary reports to the Commission on Human Rights that the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989 in its resolution 44/34, expands the international regulation of the question and confirms the legal nature of the resolutions and declarations of United Nations bodies condemning mercenary activities. Its entry into force will contribute to preventive cooperation among States, better identification of situations involving mercenaries and the clear determination of jurisdiction in each case and will facilitate procedures for the extradition of mercenaries and the effective prosecution and punishment of offenders.

78. Unfortunately, only 16 States have completed the process of expressing their willingness to be bound by the International Convention, while a further 22 are required for its entry into force. Those States are: Azerbaijan, Barbados, Belarus, Cameroon, Cyprus, Georgia, Italy, Maldives, Mauritania, Saudi Arabia, Seychelles, Suriname, Togo, Turkmenistan, Ukraine and Uzbekistan. Ten other States have signed the International Convention, but have not yet ratified it. They are: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania, Uruguay and Yugoslavia. Pursuant to article 19, the International Convention is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General. Its failure to enter into force nine years after its adoption means that international legislation on mercenaries continues to be limited to article 47 of the 1977 Protocol I Additional to the Geneva Conventions of 1949 and the 1977 OAU Convention on the Elimination of Mercenarism in Africa.

VI. CONCLUSIONS

79. Mercenary activities continue to exist in many parts of the world and to take on new forms. The recruitment and hiring of mercenaries by private companies providing security services and military assistance and advice and,

in turn, the hiring of these companies by Governments which entrust them with responsibility for security, maintaining public order and safety and even armed combat against rebel forces and organized crime are a serious challenge to the international human rights protection system currently in force.

80. Although mercenaries pose as technicians or military experts hired as such by private companies providing security services and military assistance and advice, or by Governments, this changes neither the nature nor the status of those who hire themselves out to meddle and cause destruction and death in foreign conflicts and countries.

81. Since the nature of the act and the classification of a mercenary have not changed, although the forms and operational methods have, the condemnation of mercenary activities and the use of mercenaries by the Commission on Human Rights and other United Nations bodies is still valid. Mercenary activities impede the exercise of the right of peoples to self-determination and jeopardize the sovereignty of States, the principle of non-interference in internal affairs, the stability of constitutional Governments and the enjoyment of the human rights of the peoples concerned. They are, by definition, wrongful and unlawful activities.

82. The diversification and modernization of operational methods do not mean that mercenary activities are disappearing; rather, the conclusion is that, as mercenaries have become better organized and their pay has increased, their numbers have grown and more persons are prepared to do the job, although, for reasons of self-esteem, they sometimes prefer to pose and think of themselves as military experts or soldiers of peace.

83. The information received by the Special Rapporteur suggests that, even though Africa continues to be the continent most affected by mercenary activities, these activities have spread to other continents, although the methods of operation vary according to the situation in the country in which their services are hired.

84. Mercenaries have been particularly active in Sierra Leone, where they were taken first by Executive Outcomes, the security and military advisory and assistance company registered in South Africa, and then by Sandline International, which is registered in the Bahamas and has offices in London. These two played an important role in the overthrow of the military junta of the alliance formed by the Armed Forces Revolutionary Council (AFRC) and the Revolutionary United Front (RUF) and in restoring democratically elected President Tejan Kabbah to power. They also trained the Kamajor paramilitary troops who are fighting the rebel forces of the overthrown Government with the acquiescence of the current Government and are responsible for grave human rights violations against prisoners and the civilian population. As a result of this intervention, a number of affiliates of Executive Outcomes and Sandline International are now exploiting Sierra Leone's mineral resources and the Diamond Works company has become Canada's largest diamond producer thanks to its operations in this West African country.

85. The Special Rapporteur has observed that the current situation is marked by the inadequacy of the international rules which deal with and punish

mercenarism. The legal gaps and ambiguities detected suggest that the existing set of rules is by no means effective for successfully combating mercenary activities.

86. Mercenarism is not classified as a separate crime in the criminal legislation of most States, a situation that prevents legal action from being taken against mercenaries, except when they have committed related offences and are charged therefor.

87. Terrorist acts may be committed by mercenaries. Further consideration should be given to studies and the adoption of anti-terrorist policies; mercenarism should be seen as an aggravating factor in the crime of terrorism when there is proof that a mercenary planned, took part in or committed the terrorist act.

88. The increase in the number of companies providing security services and military assistance and advice on the international market and their recruitment and hiring of mercenaries raise serious questions about responsibility for human rights violations and encourage impunity. Governments are therefore tempted to transfer their responsibility for the violations committed to these companies and they, in turn, transfer it to the mercenaries they have recruited. The Commission on Human Rights must give priority to this matter because it will affect the entire international system for the protection of human rights.

89. The hiring of private companies providing security services and military assistance and advice is also an indicator of vested interests, more particularly those of third Powers, which see the use of this type of company as a way of effectively intervening in another country's internal affairs, without having responsibility for such intervention being attributed to them directly, without their own military forces risking casualties and without having to bear military costs.

90. The growth of this type of company is indicative of little, if any, international reaction to their activities. Even some international organizations have given in to the temptation of using their services to obtain logistical support to or open up avenues of humanitarian assistance. There is also a chance that traditional Government peace-building and peacekeeping forces may be replaced by these companies, in conjunction with a smear campaign against the Government forces and reminders of serious incidents that have occurred, such as those in Somalia. The possibility of an artfully devised campaign and intentionally promoted tolerance of this type of company warrants serious investigation.

91. The legal gaps, defects and ambiguities that currently facilitate mercenary operations by these polyvalent companies should be remedied through explicit rules that regulate and clearly limit what these private companies may and may not do internationally, while clearly defining their responsibility for human rights violations and abuses and other crimes and offences, as well as that of the States that hire them and that of the individuals who recruit them. The United Nations mandate and its work in peace-building and peacekeeping operations must be strengthened at the same time.

92. As the tenth anniversary of the General Assembly's adoption of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries approaches, only 16 States have agreed to be bound by it. The fact that it has not entered into force continues to contribute to the increase in the criminal activities of mercenaries.

VII. RECOMMENDATIONS

93. The Commission on Human Rights should pay priority and urgent attention to the challenge to the system for the international protection of human rights created by the growth and development of companies providing security services and military assistance and advice, their recruitment and use of mercenaries and the increase in the use of such companies by Governments facing internal armed conflicts or the aggression of organized crime or terrorism. Because of the difficult situation they are in, these Governments do not have the funds to pay for the services of these companies and have to grant them major concessions of mineral and oil resources that account for a valuable share of their national heritage. The blurred lines of responsibility for human rights violations and the resulting impunity must be carefully studied by the Commission.

94. The Commission on Human Rights must continue to uphold its explicit condemnation of mercenary activities, regardless of the form they take, requesting the Member States of the United Nations to classify mercenarism as a crime in their internal criminal law and to make the fact of being a mercenary an aggravating factor in the commission of other wrongful criminal acts, especially acts of terrorism.

95. The Commission on Human Rights must also communicate once more with all Member States of the Organization to recommend that they should explicitly prohibit the use of their territory for the recruitment, training, assembly, transit, financing and use of mercenaries.

96. Given the legal ambiguities and gaps that currently facilitate the use of mercenaries and the increase in their numbers, it is recommended that the Commission on Human Rights should invite Member States to ratify or accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

97. The Commission on Human Rights also has to consider the serious risk of joint action by terrorists and mercenaries in carrying out attacks in which some are motivated by ideological, political or religious beliefs, or simply by hatred, while others just want to earn money. It should therefore be recommended that the studies, plans and action which the Commission considers in order to prevent and punish human rights violations and abuses, particularly terrorism, should also take account of the dimension of participation by mercenaries.

98. The Commission should recommend to the Economic and Social Council that it allocate the necessary financial and budget resources to the Office of the United Nations High Commissioner for Human Rights to enable it to disseminate information, in the bulletins it is publishing, on the adverse effects of mercenary activities on the enjoyment of human rights and the exercise of the

right of peoples to self-determination. The Office of the High Commissioner must also be allocated the resources it needs to provide technical assistance services to countries which have suffered the consequences of mercenary activities, if they so request.

99. The Commission on Human Rights must remind all States and international organizations of the need for constant vigilance in monitoring companies that employ mercenaries, particularly those that offer security services and military assistance and advice on the globalized international market.

100. The Commission on Human Rights must carefully monitor the human rights situation and the exercise of the right of peoples to self-determination in the countries where these companies operate.

101. The Commission must also remember that mercenaries base their comparative advantage and greater efficiency on the fact that they do not regard themselves as being bound to respect human rights or the rules of international humanitarian law. Greater disdain for human dignity and greater cruelty are considered efficient instruments for winning the fight. The participation of mercenaries in armed conflicts and in any other situation in which their services are unlawful may jeopardize the self-determination of peoples and always hampers the enjoyment of the human rights of those on whom their presence is inflicted.